

January 29, 2010

LSA Document #08-764 (Antidegradation)
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Ave.
MC 65-41
Indianapolis, Indiana 46204-2251

Re: NIPSCO Comments to IDEM's Second Notice of Comment to the Antidegradation Draft Rule

Dear Ms. Stevens:

The Northern Indiana Public Service Company ("NIPSCO") thanks you for the opportunity to comment on the above referenced Second Notice of the proposed Antidegradation Rule (the "Proposed Rule"). We believe the below comments provide constructive ideas concerning the Proposed Rule and will help build upon the discussions between IDEM and the affected stakeholders.

NIPSCO is a gas and electric utility serving the northern third of Indiana. NIPSCO has four active electric generating stations with two sited on Lake Michigan, one on the Kankakee River, and one located off of the Wabash River in near Terre Haute. We have been pleased to work with the Indiana Energy Association ("IEA"), the Indiana Manufacturers Association ("IMA"), and the Northwest Indiana Forum in assessing the Proposed Rule and concur in the comments each of those entities has, or will soon, submit concerning the Proposed Rule. Additionally, NIPSCO respectfully submits the below comments concerning issues especially germane to our operations.

1. Thermal 316 (a) Variance Exemptions

327 IAC 2-1.3-3: Antidegradation standards.

Parties who apply for a CWA § 316(a) thermal variance or who renew an existing CWA § 316(a) thermal variance should not be required to undergo an antidegradation demonstration as contemplated by the Proposed Rule.

The Proposed Rule should be revised to reflect that an antidegradation demonstration is not required for agency-issued 316(a) thermal variances. In response to a somewhat similar

public comment offered during the 2008 comment period associated with the Proposed Rule, IDEM stated that a “316(a) variance does not include a review of alternatives that would eliminate or reduce the need for the effluent limits that exceed the WQBELs for temperature.” All 316(a) variance applications (new and renewal), however, are required to include a review of the technologies capable of treating pollutants of concern and the social and economic costs of installing and operating each technology. This review is very similar to the technology review and demonstration of social or economic importance that is required for antidegradation demonstrations. If necessary, IDEM should specify any significant differences in renew / demonstration requirements between the 316 (a) variance and anti-degradation rules.

In fact, the United States Environmental Protection Agency recommends that States use the same process for reviewing social and economic impacts for variances and antidegradation review (EPA 823/B-95-002 (March 1, 1995)). Thus, if IDEM has granted a new or renewed variance to a NIPSCO facility, it makes sense that we should not also need to complete an antidegradation demonstration. A 316(a) variance demonstration effectively satisfies antidegradation requirements in all material respects. Consequently, no additional review beyond the materials used to obtain a 316(a) variance should be required. In other words, the alternatives review of the 316(a) process and antidegradation demonstration are substantially similar and effectively redundant. One who expends significant resources to proceed through the vigorous 316(a) process should not be made to exhaust even more resources for no material benefit.

2. Determination of De minimis Exemption for Increased Loadings

We are concerned that the Proposed Rule lacks the necessary clarity with respect to the procedures which will determine de minimis exemptions for increased loadings. In particular, clarity is needed with respect to the:

- Application of more restrictive considerations for OSRW (i.e., 1% of existing unused loading capacity for increase and 97.5% of baseline unused loading capacity for cap vs. 10% increase and 90% cap for non-ORSW))
- Calculation of total loading capacity (TLC) for discharge to lake with no alternate mixing zone
- Definition of the bright line for evaluation of the antidegradation de minimis exemption. The bright line should be established as applicable permit limits as opposed to existing effluent concentration/mass prior to a deliberate action

These three issues have been detailed in comments submitted by IMA/IEA as well as the Northwest Indiana Forum. NIPSCO concurs with these comments and urges revision to the Proposed Rule to accommodate the need for changes in facility operations such as the installation of a Wet Air Pollution (WAP) control device, i.e., Flue Gas Desulfurization (FGD) air pollution control units.

Further, the Proposed Rule needs clarity with respect to the procedures to be used to calculate the TLC for both rivers and lakes. The question for de minimis evaluation is: what happens when an alternate mixing zone has not been implemented in an OSWR lake?

Typically the TLC has been determined as the product of a chronic criterion and 7Q10 river flow (using appropriate conversion factors). This approach is suitable for streams with appreciable flow, that is, a 7Q10 greater than zero. However, for a lake discharger, there is no “stream design flow” and the TLC may be determined from the chronic criterion times the effluent flow, thereby effectively negating the de minimis exemption. Additional total loading capacity for lake would only exist if an alternate mixing zone is granted.

The above three scenarios illustrate the need to clarify the Proposed Rule’s procedures for calculating total loading capacity, defining an appropriate bright line, and consistently applying the % increase and % cumulative cap to all HQW (OSRW or non-OSRW).

NIPSCO greatly appreciates the opportunity to provide these comments to IDEM and we hope that they will be helpful in the drafting of this rule. Please contact Dan Plath, EH&S Coordinator at (219) 647-5268 or dkplath@nisource.com if you have any questions or concerns.

Thank You

Sincerely,

Kelly Carmichael

Director of Permitting & Regulatory Services

NiSource Corporate Services